

**Consent Agenda**  
**Tree Removal Appeal Case A-2168**

Remove one twenty-two (22)-inch diameter Silver Maple and one twenty-two (22)-inch diameter White Pine tree located in the center of the Property.

Ms. Bernice P. and Mr. James M. Todaro  
104 Newlands Street

**To:** Board of Managers  
**From:** Laura Billings  
**Date:** December 30, 2014  
**Re:** TOB Report Regarding Case A-2168, Removal of Silver Maple and White Pine from 104 Newlands Street

Bernice and James Todaro wish to remove two mature 22" trees – a Silver Maple and a White Pine – from their property at 104 Newlands. The Todoros purchased the lot at 104 Newlands in order to build a house next door to their daughter and her family, who recently purchased the newly constructed house at 106 Newlands. The architectural plans for the Todoros' proposed house require removal of the Silver Maple and the White Pine, which are located in the center of the Property.

In early December, Mr. and Mrs. Todaro duly filed an appeal of the Village Manager's decision to deny removal of the Silver Maple and White Pine. They were then referred to the Tree Ordinance Board. On December 29, I contacted the Todoros' abutting and fronting neighbors about the proposed removal, and I received no concerning or negative comments. To the contrary, Ms. Anna Brown at 106 Newlands, Mr. Arthur Phelan at 6300 Brookville, and Mr. Geoff Etnire at 111 East Melrose expressed support.

Members of the Board inspected the trees and potential sites for reforestation. The trees are mature and well formed. Nevertheless, the TOB members concluded that the trees were not so remarkable as to preclude removal and reforestation so that the Todoros can build their house.

Mr. and Mrs. Todaro are amenable to reforesting. They agree to choose two trees from the Village's recommended list and/or meeting the Village's specifications for replacement trees. Mr. and Mrs. Todaro have reviewed and offered no objection to a Consent Agreement in the same form as has been used in prior TOB actions, requiring maintenance of the reforestation tree until it reaches maturity (defined as 24" in circumference measured at 4 ½ feet above grade).

I believe that the proposed reforestation and Consent Agreement reflect a reasonable resolution of the issues in a manner consistent with Village Board policies.

Submitted by:

Laura Billings  
Chairperson  
Tree Ordinance Board

# REFORESTATION CONSENT AGREEMENT

## RECITALS

This Consent Agreement ("Agreement") is entered into by CHEVY CHASE VILLAGE, ("Village"), a Maryland municipal corporation and James M. Todaro and Bernice P. Todaro, (collectively "OWNER"), the owners of Lot 12, Block 46, in the subdivision known as Section 2, CHEVY CHASE, as per plat thereof recorded in plat book 2 at plat 106, among the Land Records of Montgomery County, Maryland, also known as 104 Newlands Street (the "Property").

The Owners have requested a permit from the Village Manager under Section 17-3 of the Village Code to remove one twenty-two (22)-inch diameter Silver Maple tree and one twenty-two (22)-inch diameter White Pine tree, hereinafter referred to as the "Subject Trees", (the trunk of which measures more than 24 inches in circumference at 4-½ feet above ground and therefore requires a permit for removal) located in the center of the Property as indicated on the plan attached hereto as Exhibit A. The Owner seeks to remove the Subject Trees in order to construct a new house, hereinafter referred to as the "Proposed Work". The Village Manager denied the permit for failure to meet any of the conditions set forth in Section 17-3.

The Owner has appealed the denial of the permit. The appeal was considered under the criteria set by Section 17-5 of the Village Code, by the Tree Ordinance Board ("TOB"), which has issued its recommendation.

The TOB, after following the requirements for notice to confronting and abutting owners and the Village Tree Committee, concluded that the Proposed Work was a legitimate reason for removing the Subject Trees, that it was necessary to remove the trees to construct the Proposed Work, and that the trees

proposed to be removed were not by reason of age, size or outstanding qualities, including uniqueness, rarity or species specimen, of such nature as to require their preservation.

Based on the foregoing, the TOB provided its recommendation, which has been accepted by the Board of Managers. The Board has decided that it is in the public interest to grant the Owner's appeal, on condition that the Owner sign this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings and obligations herein contained, One Dollar (\$1.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and the Owner hereby agree and covenant as follows:

1. The Owner will obtain a permit to construct the Proposed Work.
2. The Village, after the issuance of the aforesaid permit will grant a permit to the Owner for the purpose of removing the Subject Trees described above and located as indicated on Exhibit A promptly after the effective date of this Agreement.
3. The Owner agrees to reforest within one year from the effective date of this Consent Agreement by planting the Reforestation Tree(s) (or variety thereof) of at least 2-½ inches in caliper in a location to be determined in consultation with the Tree Ordinance Board and to replace such tree(s) if it becomes diseased or dies within two years of the effective date of this Agreement. The Owner further agrees to notify the Village Manager when the tree(s) has been planted.
4. The Owner agrees to maintain the Reforestation Tree(s) at the Owner's sole expense and the Owner shall not remove, destroy, or impair the health of the reforestation tree(s) in any way without the express prior written consent of the Village.
5. Any changes or modifications to the Consent Agreement shall require the further written consent of the Village, which may be withheld in the Village's sole discretion.



6. The Owner acknowledges that compliance with this Consent Agreement is necessary for the protection of the public health, safety and welfare of the residents of the Village and acknowledge and agree, in the event of Owner's breach of this Agreement, that the Village would not have an adequate remedy at law, and the Village shall be entitled to specific performance of the Owner's obligations and to injunctive relief related thereto without posting a bond or proving actual damages, in addition to any other remedies which may be available. The Owner further agrees that the costs incurred by the Village to enforce the Agreement, including legal expenses, shall be charged to the Owner and may be assessed against the Owner's property along with property taxes. The Owner further agrees not to contest any action brought by the Village to obtain specific performance and injunctive relief under this Agreement.

7. The Owner also acknowledges that the Village and the public residing in the Village would incur substantial damages in the event of Owner's breach of the requirements of this Agreement, including, but not limited to, the costs of staff time, arborist time, and other expenses incurred in enforcing this Agreement and the diminution of the Village's tree canopy. The parties recognize the difficulty in computing actual damages and, accordingly, agree to liquidated damages for the aforesaid costs, delay, and harm to the public. The parties acknowledges that liquidated damages of \$1,000.00 are a reasonable estimate, at the time of the execution of this Agreement, of the damages to the Village and the public that will likely occur as a result of the Owner's failure to perform their obligations under this Agreement. The Owner acknowledges that the liquidated damages agreed to are not a penalty and that they, along with any costs incurred by the Village, including legal expenses, may be assessed against the Property along with property taxes.

8. The Owner shall be jointly and severally liable for their obligations hereunder and expressly waive any right to a jury trial.

9. The effective date of this Consent Agreement is the date the Village Manager signs the Agreement signifying that she has been informed by the Village Board of Managers that the Consent Agreement has been approved.

OWNER:

CHEVY CHASE VILLAGE

\_\_\_\_\_  
James M. Todaro

By:

\_\_\_\_\_  
Shana R. Davis-Cook, Village Manager

\_\_\_\_\_  
Bernice P. Todaro

Date: \_\_\_\_\_

DRAFT

**Chevy Chase Village**

**Statement of Appeal for Tree Removal Permit**

**Subject Property:**

**104 Newlands Street, Chevy Chase 20815**

**Briefly Describe the Proposed Tree Removal** (provide additional detail on following pages):

We would like to remove a 22" white pine and a 22" silver maple in the build-able area for the proposed house on said lot

**Applicant Name(s) ( List all property owners):**

**James M. and Bernice P. Todaro**

Daytime telephone:

703-864-1683

Cell:

703-864-1683

E-mail: btodaro@gmail.com

Address (if different from property address):

**106 Newlands Street, Chevy Chase 20815**

*For Village staff use:*

Date this form received:

12/5/14

Tree Removal Permit Appeal No:

A - 2168

**Filing Requirements:**

(Application will not be accepted or reviewed until the application is complete.)

☐

Completed *Chevy Chase Village Statement of Appeal for Tree Removal Permit* (this form)

☐

Denied *Chevy Chase Village Tree Removal Permit Application*

☐

*Chevy Chase Village* Tree Inspection Report from Village Arborist

☐

Surveys, plats, landscaping plans/specifications, or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc. and the tree(s) sought to be removed.

☐

Appeal fee (See fee schedule in Chapter 6 of the Village Code).

**Affidavit**

I hereby certify that I have the authority to submit the foregoing appeal, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, the Board of Managers, and members of the Village Tree Committee, to enter onto the subject property for the purposes of assessing the site in relation to this appeal. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing statement are true and correct to the best of my knowledge, information and belief.

**Applicant's Signature:**

James M. Todaro

**Date:**

12/04/2014

**Applicant's Signature:**

Bernice P. Todaro

**Date:**

12/5/2014



**Describe the basis for the appeal** (attach additional pages as needed)

Describe the reasons why the tree removal would not adversely affect the public health, safety or welfare nor the reasonable use of adjoining properties:

---

---

---

---

Describe the reasons why the tree removal would not substantially impair the intent and purpose of Chapter 17 of the Chevy Chase Village Code, entitled *Urban Forest*:

---

---

Describe whether the tree exhibits any of the following criteria: (i) is diseased beyond restoration, insect infested beyond restoration, or injured beyond restoration; (ii) is dead or dying, or in danger of falling; (iii) constitutes a hazard to the safety of persons; (iv) constitutes a hazard to the safety of property; (v) constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees; (vi) is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner:

unknown

---

---

Describe the reasons for wanting to remove or destroy the tree(s):

We would like to build a new single family home next to our daughter's home. We have no reasonable alternative to build that would not require the removal of these trees.

---

---

Describe the reasons, if any, cited by residents who are either in favor of or in opposition to the issuance of the requested tree removal permit:

Our neighbor at 106 Newlands St. is in favor.

---

---

If the desired tree clearing is necessary to achieve proposed development, construction or land use otherwise permitted under the Village Code, describe the proposed project and/or land use and any reason(s) why there is no reasonable alternative to the tree removal:

There are 4 trees in the buildable area, one has been approved for removal, one we would like to keep. The removal of these two trees is needed to accomodate the proposed new construction.

---

---



Describe any proposed reforestation and whether the proposed reforestation includes any trees that meet the Village standards for reforestation (i.e., deciduous hardwood trees that are least 2 ½ inches in caliper at the time of installation and of a species that achieves a mature height of at least 45 feet):

We would be willing to work with the Tree Ordinance Board and are amenable to reforestation.

Describe any hardship that would result if the requested tree removal is denied:

We have no reasonable alternative but to remove the trees. If denied we would not be able to proceed with our plans to build our home so that we could be next door to our daughter.

Describe the reasons why preserving the tree(s) is not desirable because of the age, size or outstanding qualities, including uniqueness, rarity or species specimen, of the tree(s):

1)Pine is not a particularly desirable species and doesn't contribute to the carbon offset. 2)Silver Maple (20-25 yrs) has a co-dominant leader, which is not a desirable feature. 3)Neither are specimen trees.

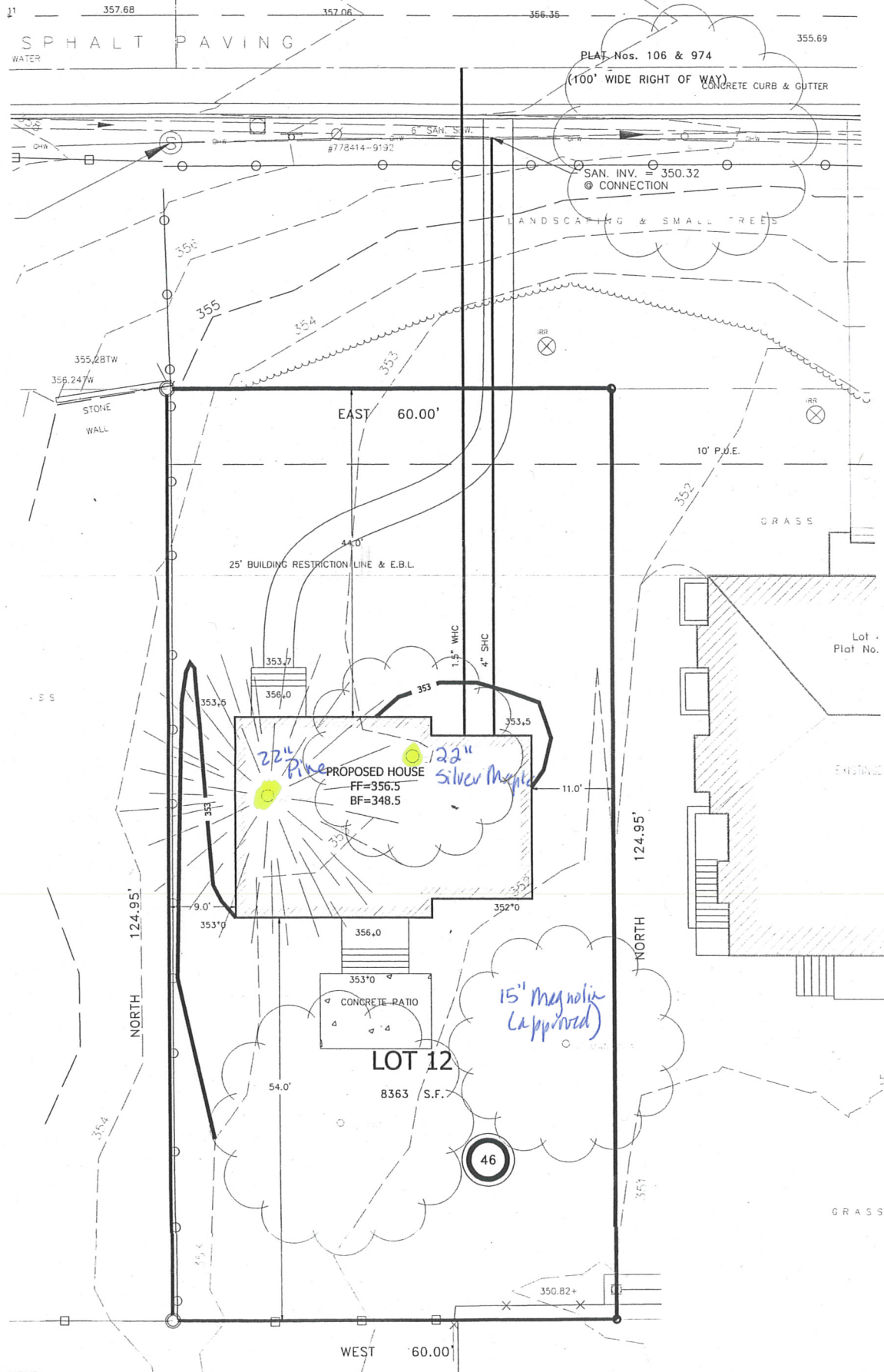
Describe any other relevant matters that you believe would promote fairness and justice in deciding this appeal:

We purchased the lot to build a new home to be near our daughter. Surely among the intents and purposes of the Village Code must be the ability to develop one's property.

*In authorizing a Tree Removal Permit as a result of this appeal, the Chevy Chase Village Board of Managers may require such conditions, terms or restrictions as it deems necessary in order to protect the public, health, safety or welfare, the reasonable use of adjoining properties and that will substantially effectuate the purpose and intent of Chapter 17 of the Chevy Chase Village Code.*

<b>Appeal Fee: \$250.00</b>	<b>Checks Payable To:</b> <b>Chevy Chase Village</b> <b>5906 Connecticut Ave.</b> <b>Chevy Chase, MD 20815</b>
<b>Fee Paid:</b> <b>Date Paid:</b>	<b>Staff Signature:</b> <b>Date:</b>

# NEWLANDS STREET



## LITY DISCLAIMER

HAVE BEEN LOCATED FROM FIELD SURVEY INFORMATION  
 : SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND  
 ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR  
 FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES  
 LOCATION INDICATED ALTHOUGH HE DOES CERTIFY THAT THEY ARE  
 POSSIBLE FROM THE INFORMATION AVAILABLE. THIS SURVEYOR  
 ED THE UNDERGROUND UTILITIES.

## GRAPHIC SCALE



Chevy Chase Village

# Tree Inspection Request Form

<b>Property Address:</b> <u>104 Newlands St.</u>
<b>Date this form submitted to Village office:</b> <u>11/11/14</u>
<b>Resident Name:</b> <u>Todayo</u> <b>Phone:</b> <b>E-mail:</b>
<b>This request initiated by:</b> <input type="checkbox"/> Village office staff. <input checked="" type="checkbox"/> Resident/property owner
<input checked="" type="checkbox"/> Inspect tree(s) <sup>1</sup> requested for removal -- are any of conditions in Village Code Sec. 17-3(a) met? <input type="checkbox"/> Inspect trees <sup>1</sup> on property to determine if a Tree Protection Plan (TPP) is needed for proposed project <sup>2</sup> . <input type="checkbox"/> Pursuant to a Village Bldg Permit application <sup>2</sup> , prepare TPP for trees <sup>1</sup> on property [\$250 fee] <input type="checkbox"/> Verify that a TPP has been implemented for Village Building Permit # _____. <input type="checkbox"/> Follow up on an existing TPP -- is it OK to remove TPP? <input type="checkbox"/> Village right-of-way/park <input type="checkbox"/> Other: _____ <div style="font-size: small; margin-top: 5px;"> <sup>1</sup> Show location of tree(s) on a plat or site plan (or on diagram on reverse, but only if plat unavailable).  <sup>2</sup> Attach full description of proposed project.           </div>

Sections below must be completed by Village Arborist:

**Tree #1:**    ☒ Private Property    ☐ Village right-of-way  
 Location:    ☐ Rear    ☐ Front    ☐ Side-L    ☐ Side-R  
 DBH\*= 22"    Species: White Pine    Tag#: \_\_\_\_\_ ☒ n/a: no tag.  
 Assessment: Healthy, no targets, 1 failed


**Tree #2:**    ☒ Private Property    ☐ Village right-of-way  
 Location:    ☐ Rear    ☐ Front    ☐ Side-L    ☐ Side-R  
 DBH\*= 22"    Species: Silver Maple    Tag#: \_\_\_\_\_ ☐ n/a: no tag.  
 Assessment: Healthy

**Tree #3:**    ☒ Private Property    ☐ Village right-of-way  
 Location:    ☐ Rear    ☐ Front    ☐ Side-L    ☐ Side-R  
 DBH\*= 15"    Species: S. Magnolia    Tag#: \_\_\_\_\_ ☒ n/a: no tag.  
 Assessment: In Decline 30-40% Dead

(For more trees, please check here ☐ and attach pages: # of extra trees \_\_\_\_; # of extra pages \_\_\_\_.)

**Arborist assessment: Does tree meet any of the conditions in Village Code 17-3 to qualify for removal?**

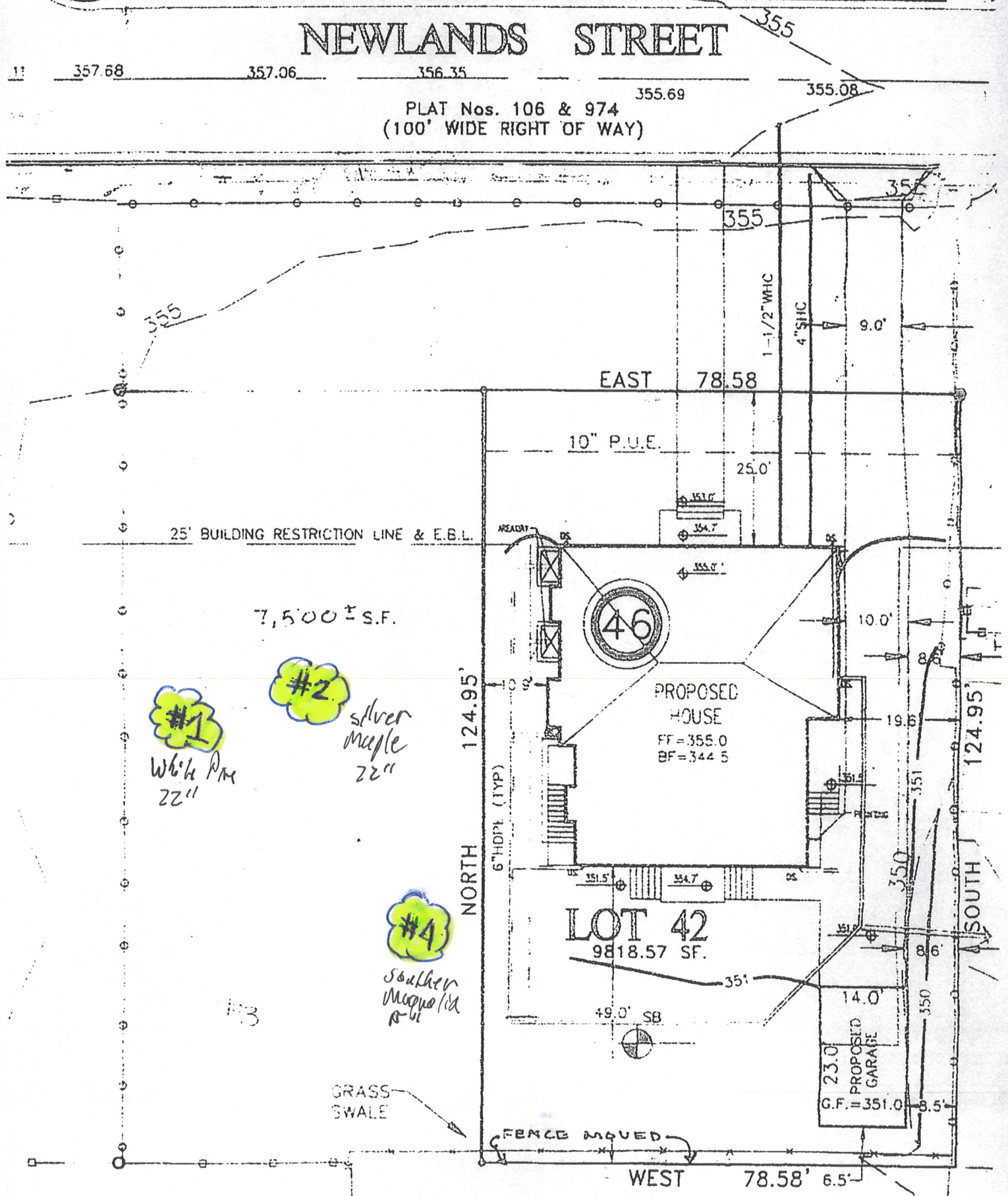
Removal Approved	Denied	*Is permit required? (i.e, trunk circumference ≥24")    Y    N
Tree #1 <input type="checkbox"/>	<input checked="" type="checkbox"/>	Tree #1 <input checked="" type="checkbox"/> <input type="checkbox"/>
Tree #2 <input type="checkbox"/>	<input checked="" type="checkbox"/>	Tree #2 <input checked="" type="checkbox"/> <input type="checkbox"/>
Tree #3 <input checked="" type="checkbox"/>	<input type="checkbox"/>	Tree #3 <input checked="" type="checkbox"/> <input type="checkbox"/>

**Arborist/Staff Signature**     **Date** 11/20/14



# NEWLANDS STREET

PLAT Nos. 106 & 974  
(100' WIDE RIGHT OF WAY)





## Chevy Chase Village

# Tree Removal Permit Application

Permit No. \_\_\_\_\_

*All trees on private property with trunks that measure at least twenty-four (24) inches in circumference (or 7.7 inches in diameter) at four and one-half (4½) feet above ground level require a Village permit to be removed.*

<b>Property Address:</b> 104 Newland Street Chevy Chase, MD 20815	
Resident: Todaro Residence	
Telephone:	
E-mail:	
<b>Tree Removal Contractor (required and must be a Maryland Licensed Tree Expert):</b>	
Business Name: Mulheron Tree Experts, Inc.	
Owner: Edward Mulheron	
Address: 10563 Metropolitan Avenue Kensington, MD 20895	
Telephone: 301-674-6689	Fax: 301-942-6734
E-mail: kathy@mulherontreeexperts.com	
MD Dept. of Natural Resources (DNR) Licensed Tree Expert (LTE) No. (required): #715	
<i>For Village office staff use:</i>	
Is this property located within the historic district? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Staff initials <u>CB</u>
Verification of species pursuant to Sec. 17-3(a)(7): _____	Staff initials _____
Date application submitted to Village Office: <u>11/19/20</u>	Date approved or denied: _____

### Village Code Chapter 17. Urban Forest §17-1 and 17-2. Permit Required.

"No person shall remove or destroy, or cause the removal or destruction, of a tree or undertake any action that will substantially impair the health or growth of a tree without first obtaining a permit from the Village Manager. No permit shall be required for normal and reasonable trimming or other tree care designed to maintain the health, shape, or balance of a tree."

### Village Code §17-3. Permit Standards.

The Village Manager may issue a permit *only* if at least one (1) of the following conditions applies:

- The tree is diseased beyond restoration, insect infected beyond restoration, or injured beyond restoration;
- The tree is dead or dying, or is in danger of falling;
- The tree constitutes a hazard to the safety of persons;
- The tree constitutes a hazard and threatens injury to property;
- The tree constitutes a hazard and threatens injury to, or would have a negative effect on the health of other trees;
- The tree is injurious to or creates a condition injurious to the health of a person, certified to by a qualified medical practitioner;
- The tree is on a list of tree species of little value, as determined by the Board of Managers after consultation with the Village arborist and Village Tree Committee.

**An applicant who is denied a tree removal permit by the Village Manager may appeal that decision to the Board of Managers. Any appeal must be in writing and made within ten (10) days of the permit denial.**

### Filing Requirements

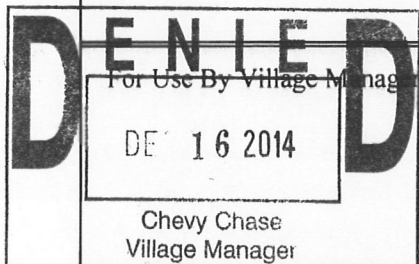
- Copy of the findings and recommendations report from the Village Arborist or, pursuant to Sec. 17-3(a)(7), Village staff.
- This completed application, including the tree contractor's name, phone number and MD-DNR License No.
- Payment of \$50.00 per tree filing fee for a Village Tree Removal Permit application, up to a max. of \$350.

Do you intend to reforest on your property?   No  

By signing below, I understand that no work may be performed until the Village permit is issued and posted to be visible from the street.

Applicant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Tree Removal Plans (including reforestation plan, if any)	
Remove 22" DBH White Pine Tree-left side of house.	
Remove 22" DBH Silver Maple Tree-left side of house.	
Remove 15" DBH Magnolia Tree-left side of house.	
For Use By Village Manager	Approved with the following conditions:
For Use By Village Manager	Denied for the following reasons:



<b>Filing Fee:</b> <i>Check # 10577</i> \$50.00/tree x <u>3</u> trees = \$ <u>150.00</u> (up to \$350 max. per application)	<b>Checks Payable to:</b>  <div style="text-align: center;"> <b>Chevy Chase Village</b>  <b>5906 Connecticut Avenue</b>  <b>Chevy Chase, MD 20815</b> </div>
<b>Damage Deposit</b> <input type="checkbox"/> \$ _____ <input type="checkbox"/> Waived by Village Manager.	Village Manager Signature:  Date:
Total Fees + Deposit:	Staff Signature:  Date:

**MAILING LIST FOR APPEAL A-2168**

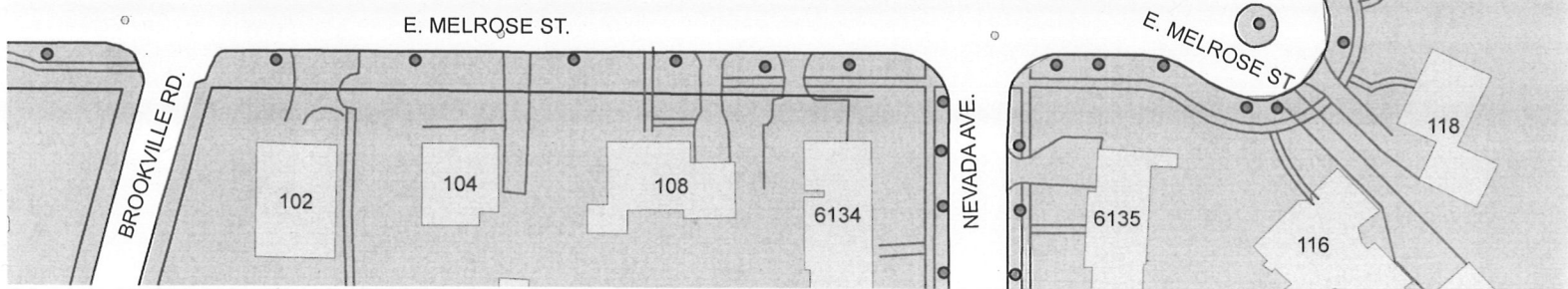
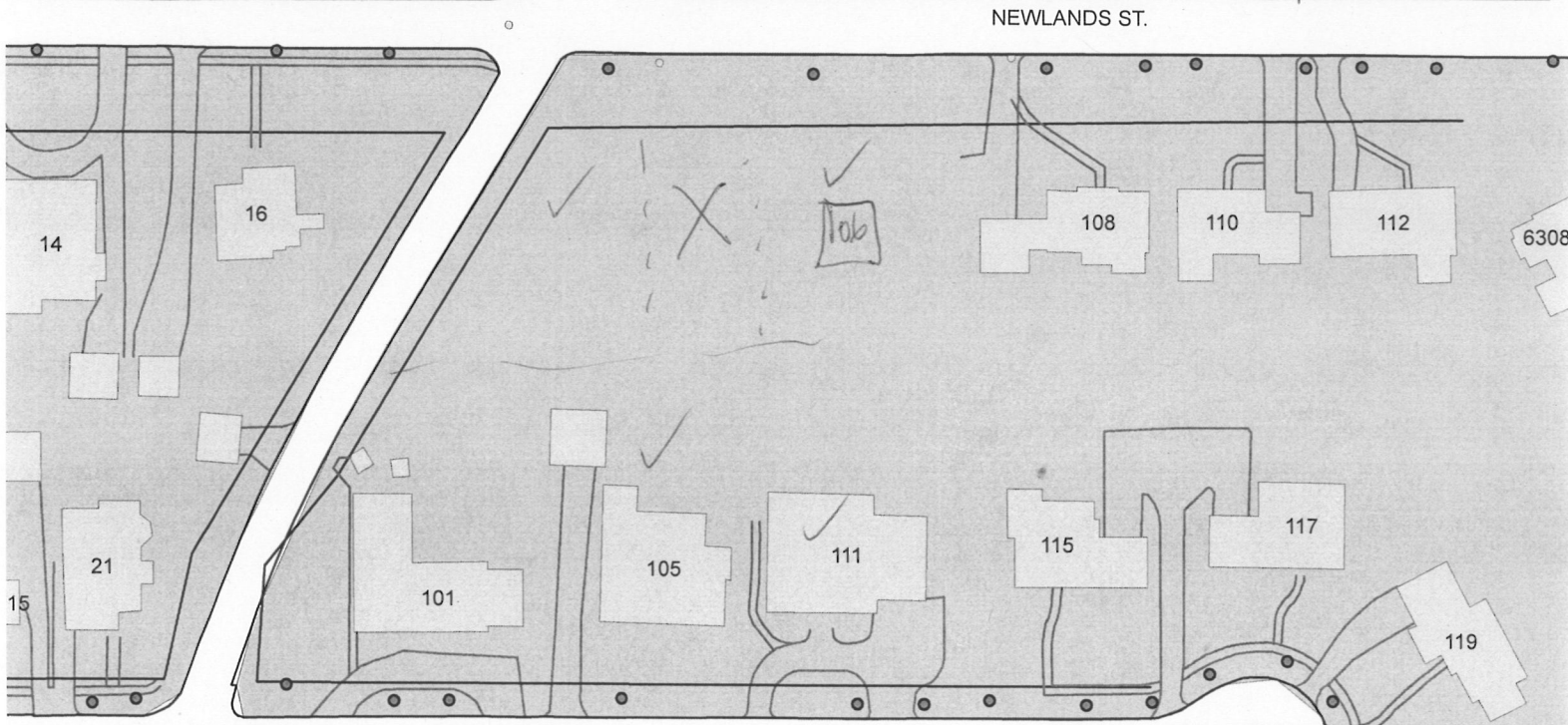
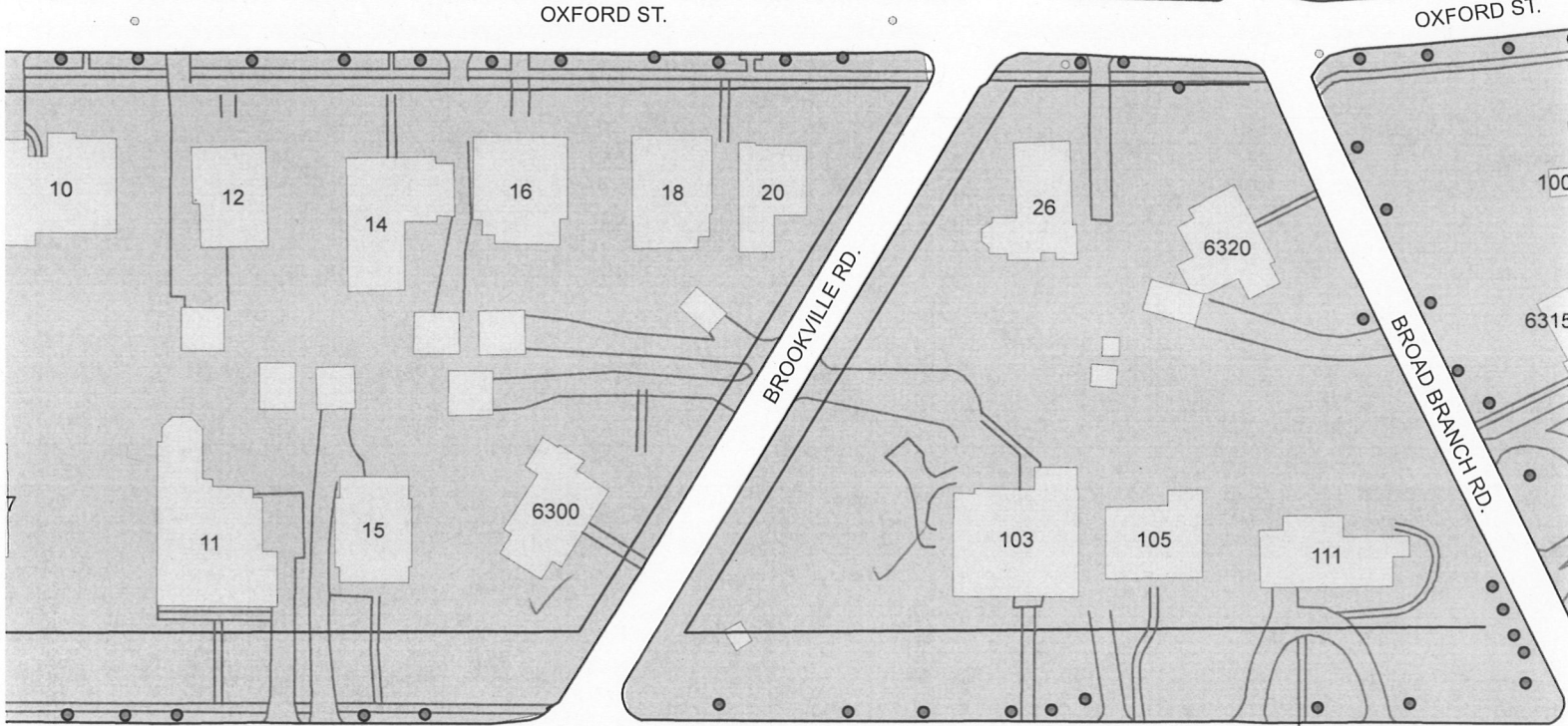
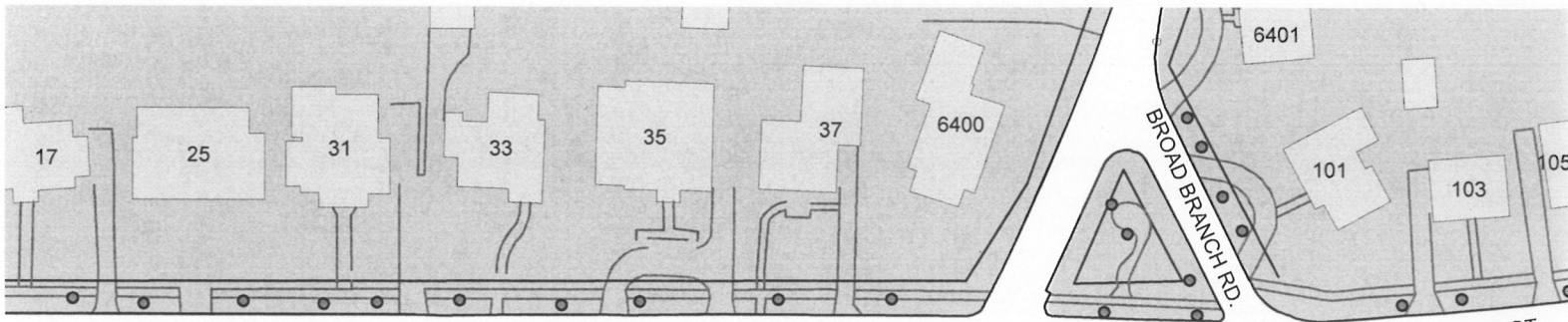
**MR. & MRS. JAMES TODARO**  
**104 NEWLANDS STREET**  
**C/O 106 NEWLANDS STREET**  
**CHEVY CHASE, MD 20815**

---

**Adjoining and confronting property owners**

Ms. Laura Rosenfeld Barnes; Mr. Phillip Rosenfeld; & Mr. David Rosenfeld c/o Mr. Ronald Rosenfeld 1881 N. Nash Street #TS 10 Arlington, VA 22209	Mr. & Mrs. Robert S. Morgenstein Or Current Resident 16 Newlands Street Chevy Chase, MD 20815
Mr. & Mrs. Arthur J. Phelan Or Current Resident 6300 Brookville Road Chevy Chase, MD 20815	Mr. & Mrs. Thomas B. Leachman Or Current Resident 103 Newlands Street Chevy Chase, MD 20815
Current Resident 106 Newlands Street Chevy Chase, MD 20815	Ms. Francesca Danieli & Mr. Gary Gensler Or Current Resident 105 East Melrose Street Chevy Chase, MD 20815
Ms. Susan Goldberg & Mr. Geoffrey Etnire Or Current Resident 111 East Melrose Street Chevy Chase, MD 20815	







## **CODE EXCERPT (Section 17-4):**

### **(c) Appeal procedures.**

- (1) Upon the filing of an appeal, the Village Manager shall forthwith transmit the record pertaining to the appeal to the Tree Ordinance Board.
- (2) The Tree Ordinance Board shall determine if the tree(s) has such outstanding qualities that it should not be removed. If the Tree Ordinance Board finds that the tree is a candidate for removal, the Tree Ordinance Board shall meet with the applicant and/or the applicant's representative as soon as practicable but no later than ten (10) days after an appeal is filed. The Tree Ordinance Board shall work with the applicant to develop a reforestation plan which, taking into consideration the factors in Section 17-6, the Tree Ordinance Board finds would not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties and would not substantially impair the purpose and intent of this Chapter. In developing the reforestation plan, the Tree Ordinance Board will affirmatively solicit input from residents of adjoining and confronting properties and from the Village Arborist.
- (3) If the applicant agrees to a reforestation plan that the Tree Ordinance Board finds meets the standards in sub-section (1) above, the Tree Ordinance Board shall prepare a report to the Board of Managers and the matter will be placed on the consent agenda for approval at the next Board of Managers meeting that is at least ten (10) days after the issuance of the Tree Ordinance Board's report. The matter may be removed from the consent agenda only at the request of two (2) or more members of the Board of Managers.

### **PROCESS (following denial of Tree Removal Permit Application):**

- ☑ Village Staff receives complete Tree Removal Appeal application from Applicant
- ☑ Village Staff transmits application to TOB
  - Staff can provide mailing of abutting neighbors list to TOB at this time
- ☑ TOB determines if tree is a candidate for removal
- ☑ TOB meets w/ Applicant (within 10 days of receipt of application)
- ☑ TOB develops Reforestation Plan w/ Applicant
  - Solicits input from abutting & confronting neighbors
- ☑ TOB drafts Consent Agreement and transmits to Village staff
- ☑ TOB provides TOB Report to Village Staff; post to web site
- ☑ Item may go on next agenda (as Consent Agenda item) that is at least 10 days after issuance of TOB Report
- Once approved by Board of Managers, Consent Agreement can be executed and permit issued